IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 523 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARTH R PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 523 of 2003

MR DC DAVE for Petitioner No. 1

MR DIPEN DESAI, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/11/2004

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution of India, the petitioner who is a student in Manubhai Patel Dental College & Hospital, Vadodara has challenged the legality and validity of the order passed by the respondent no.1 - State of Gujarat dated 1.7.2002 in rejecting the application submitted by the petitioner transferring him from Manubhai Patel Dental College & Hospital, Vadodara to the Government Dental College at Ahmedabad on medical grounds as the petitioner is suffering from ailment pertaining to kidney.

2. It is the case of the petitioner that the case of the petitioner is required to be considered on merits for transfer on medical grounds as the petitioner had an attack of "Glomerulonephritis" (an ailment affecting the kidneys) and for two years he was under constant medication as he had blood passing through his urine and at present also, the petitioner is suffering from the same ailment and accordingly, the petitioner moved an appropriate application with the respondent no.1 for allowing the petitioner to be transferred from respondent no.3 institution to the Government Dental College at Ahmedabad by submitting an application on 24.1.2002. The respondent no.1 passed the impugned order on 1.7.2002 only on the ground that the respondent no.3 i.e. Manubhai Patel Dental College & Hospital, Vadodara is not recognised by the Dental Council of India as per the information supplied by Dental Council of India. It is the case of the petitioner that in fact, the petitioner was granted admission by the Joint Admission Committee, State of Gujarat on merits in the respondent no.3 institution and even otherwise, factually it is incorrect that the respondent no.3 institution is not recognised by the Dental Council of India. If the respondent no.3 is not recognised by the Dental Council of India as alleged then the petitioner would not have been granted admission by the Joint Admission Committee. It is also the case of the petitioner that in fact, there are two posts/seats available in which the petitioner can be accommodated on transfer on medical grounds and therefore, it is requested to allow the present petition.

3. Shri D.C.Dave, Learned Advocate appearing on behalf of the petitioner has relied upon the orders passed by the Dental Council of India dated 25.8.2000 (recognition for the year 2000-2001 1st year BDS), order dated 27.6.2001 (2nd year BDS recognition for the year 2001-2002), order dated 21.2.2002 (3rd year BDS recognition for the year 2002-2003) and the order dated 16.8.2003 (4th year BDS recognition for the year 2003-2004). He has also submitted that the first batch from the respondent no.3 institution is already out and

the respondent no.3 institution is affiliated with Bhavnagar University. Therefore, it is submitted that the ground which is give by the respondent no.1 to the effect that the respondent no.3 institution is not recognised by the Dental Council of India is factually not correct. It is also further submitted that considering the provisions of Section 10 of the Dentist Act, 1948, the respondent institution is recognised institution and in fact by now, the respondent no.3 institution must be in Part I/II of the Schedule to the Dentist Act, 1948.

4. Shri Dipen Desai, Ld. AGP who appears on behalf of the respondent no.1 has relied upon the affidavit in reply filed on behalf of the Dental Council of India and has submitted that as according to the Dental Council of India, the name of the respondent no.3 institution did not figure in Part I/II of the Dentist Act, 1948 and the Dental Council of India has not considered the respondent no.3 institution as recognised under Section 10(2) of the Dentist Act, the application of the petitioner was rejected as it was found that the petitioner cannot be transferred to the institution which is recognised one. From the impugned order, it emerges that except the aforesaid reason, no other reason has been assigned by the respondent no.1 for rejecting the application of the petitioner for transfer from the respondent no.3 to Government Dental College, Ahmedabad and mainly and only on the ground that the respondent no.3 is not recognised as per the Dental Council of India, the application came to be rejected.

5. Heard the Learned Advocates for the parties.

6. It is an admitted position that by order dated 16.8.2003, the 4th year BDS recognition for the year 2003-2004 of the respondent no.3 institution is already granted by the Dental Council of India. It is also not in dispute that the first batch from the respondent no.3 institution is out and the respondent no.3 institution is affiliated with Bhavnagar University. It is also not in dispute that the petitioner was granted admission by the Joint Admission Committee, State of Gujarat in the respondent no.3 institution. Considering the affidavit in reply, it emerges that the Dental Council of India has submitted that as the name of the respondent no.3 institution does not figure in the Part I/Part II and therefore, the said institution is not recognised as required under Section 10(2) of the Dentist Act and that is the only reason for which the application of the petitioner is rejected even considering the affidavit in

reply. It is also stated in the said affidavit in reply that the case of the respondent no.3 institution for granting 4th year BDS recognition was under consideration at the relevant time and naturally unless and until the 4th year BDS recognition is granted by the Dental Council of India so far as the respondent no.3 institution is concerned, the name of the respondent institution would not have figured in Part I/II of the Dentist Act. Now in view of the fact that by order dated 10.8.2003, the 4th year BDS recognition for the year 2003-2004 is already granted in favour of the respondent no.3 institution by Dental Council of India and therefore, naturally, the name of the respondent no.3 institution would figure in Part I/II of the Dentist Act as required under Section 10(2) of the Dentist Act. In that view of the matter, now there cannot be any difficulty in considering the case of the petitioner for transfer from the respondent no.3 institution to the Government Dental College, Ahmedabad on medical grounds, more particularly, in view of the fact that as at the relevant time, the question of 4th year BDS recognition was under consideration by the Dental Council of India and that was the only reason given by the Dental Council of India as well as the State Government rejecting the application of the petitioner for transfer of college on medical grounds. In view of the aforesaid facts and circumstances of the case, the petition partly succeeds and the respondents are directed to consider the case of the petitioner for transfer from the respondent no.3 institution - Manubhai Patel Dental College & Hospital to the Government Dental College, Ahmedabad on merits and on medical grounds and pass an appropriate order within a period of two months from the date of receipt of this order considering the fact that the only reason which was given by the respondents and the Dental Council of India for not accepting the application of the petitioner for transfer was that at the relevant time, the name of the respondent no.3 institution does not figure in Part I/II of the Dentist Act and that the question with regard to the 4th year BDS recognition was under consideration by the Dental Council of India which is now granted by order dated 16.8.2003. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(M.R.Shah, J)

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